

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF REVENUE

In the Matter of the Revocation  
of the Sales and Use Tax Permit  
of Wedgewood Jewelers, Inc.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson commencing at 1:30 p.m. on October 21, 2005, at the Office of Administrative Hearings in Minneapolis, Minnesota. The OAH record closed at the end of the hearing on October 21, 2005.

Wayne Sather, Staff Attorney, Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, MN 55146-2220, represented the Department of Revenue. Daniel Rohricht, 499 Quinlan Avenue South, Lakeland, MN 55403, the President of Wedgewood Jewelers, appeared on behalf of Wedgewood Jewelers.

**NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner, Minnesota Department of Revenue, 600 North Robert St., St. Paul, MN 55146, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## STATEMENT OF ISSUE

The issue in this case is whether or not the Respondent has failed to pay sales tax owed to the Department and, if it has, whether the Respondent's sales and use tax permit should be revoked.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Daniel Rohricht is the President of the Respondent, Wedgewood Jewelers. Wedgewood Jewelers began operations in January 1998. The business ceased operation on July 30, 2005, and will be dissolved at the end of 2005.<sup>1</sup>

2. Laura Behr has been the Department collections officer assigned to Wedgewood Jewelers since approximately March 2005.<sup>2</sup>

3. The Respondent is a monthly filer of sales tax. Accordingly, it is required to file and pay sales tax for the previous month by the 20<sup>th</sup> of the following month. The Department imposes a five percent penalty for late filing of a return. It also imposes an additional five percent penalty for every 30, 60, and 90 days a payment is late.<sup>3</sup>

4. The Respondent files its sales tax returns electronically, as do all monthly filers. The Respondent then sends a separate payment to the Department.<sup>4</sup>

5. The Respondent filed timely returns in only 11 of the 91 months since it began operations. The Respondent has had a history of falling behind in its payments of sales tax. It generally has not made payments at the time its returns were filed, causing the accrual of penalties and interest. The Respondent has been through the revocation process on a prior occasion.<sup>5</sup>

6. The Respondent filed a sales tax return for November 2004 on December 30, 2004, and a sales tax return for December 2004 on January 25, 2005. The amounts subsequently paid by the Respondent with respect to those two returns were applied by the Department to satisfy the Respondent's November and December sales tax liability, and were not applied to outstanding payments due for September 2004 and October 2004. The November 2004 and December 2004 returns and payments are not at issue in this proceeding.<sup>6</sup>

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<sup>1</sup> Testimony of Laura Behr, Daniel Rohricht.

<sup>2</sup> Testimony of Behr.

<sup>3</sup> Testimony of Behr; Minn. Stat. § 289A.60, subd. 1(e) and subd. 2.

<sup>4</sup> Testimony of Behr, Rohricht.

<sup>5</sup> Testimony of Behr.

<sup>6</sup> Testimony of Behr, Rohricht.

7. On March 25, 2005, Mr. Rohricht electronically filed four sales tax returns for the Respondent for the months of September 2004, October 2004, January 2005, and February 2005.. The computer-generated filing confirmations he received back from the Department of Revenue when he filed the four returns showed that the total amount due for September 2004 was \$2,965.00 (including interest in the amount of \$50.00 and no penalty); the total amount due for October 2004 was \$2,206.00 (including interest in the amount of \$30.00 and no penalty); the total amount due for January 2005 was \$4,866.00 (including interest in the amount of \$18.00 and penalty in the amount of \$632.00); and the total amount due for February 2005 was \$2,969.00 (with no penalty or interest due). Based on the amounts specified on the filing confirmations, Mr. Rohricht wrote a check for \$13,006.00. He believed that this amount would satisfy the entire amount of sales taxes, penalty, and interest due for September and October of 2004 and January and February of 2005. He mailed the check to the Department's general sales tax revenue area, not specifically to Ms. Behr or the collections department. The Department received the check on March 28, 2005.<sup>7</sup>

8. The electronic filing confirmations that the Department sent to the Respondent on March 25, 2005, when he initially filed the September 2004 and October 2004 returns, did not, in fact, accurately state the penalties or interest that applied to those payments.<sup>8</sup> The Department did not offer any explanation for why the filing confirmations contained errors concerning the amounts of penalty owing for September and October 2004. The amounts set forth in the filing confirmations and the accurate amounts later calculated by the Department are reflected in the chart below:<sup>9</sup>

	<b>March 25, 2005 Filing Confirmation</b>	<b>Department's Later Calculation</b>
<b>September 2004</b>	\$2,915.00 tax 0 penalty <u>50.00</u> interest \$2,965.00 total due	\$2,915.00 tax 583.00 penalty <u>60.00</u> interest \$3,558.00 total due
<b>October 2004</b>	\$2,176.00 tax 0 penalty <u>30.00</u> interest \$2,206.00 total due	\$2,176.00 tax 435.00 penalty <u>36.00</u> interest \$2,647.00 total due

9. When the Department received the Respondent's check, the Department applied the \$13,006 payment to the Respondent's oldest debt first, beginning with September 2004, and continuing with October 2004, January 2005, and February 2005. The payment was applied first to penalties, then interest, then principal due. Because of the increased amounts of penalties and interest imposed with respect to September and October, the \$13,006 payment did not cover all of the Respondent's liability for

<sup>7</sup> Testimony of Rohricht, Behr; Exs. 6-9.

<sup>8</sup> Testimony of Behr.

<sup>9</sup> Compare Ex. 8-9 with attachment to Ex. 3.

February 2005. The amount of \$1,034 remained owing for February 2005. Penalties and interest subsequently accrued on this amount.<sup>10</sup>

10. On June 13, 2005, the Department issued a Notice of Intent to Revoke Sales and Use Tax Permit to the Respondent. To avoid revocation of the permit, the Respondent was informed by the notice that it would have to pay the amount of \$1,552.19 in secured funds by July 13, 2005, and file and pay its April 2005 and May 2005 monthly sales tax returns. The notice also informed the Respondent of its right to contest the revocation by requesting a hearing before the Office of Administrative Hearings.<sup>11</sup>

11. The Respondent filed a timely written appeal of the revocation of the sales tax permit.<sup>12</sup>

12. By letter to the Respondent dated July 18, 2005, Ms. Behr confirmed that, as of that date, the Respondent had paid \$352.11 and had filed the April 2005 and May 2005 monthly sales tax returns, leaving a balance owing of \$1,204.35.<sup>13</sup> On July 18, 2005, Ms. Behr also sent the Respondent a breakdown of its tax, penalty, interest, and other charges through July 15, 2005. She emphasized that “[p]ayments to each liability are applied first to penalties, next to interest, and then to the tax due.” The breakdown provided by Ms. Behr showed the correct calculation of penalty and interest for September 2004 and October 2004.<sup>14</sup>

13. Ms. Behr and other Department staff have carefully reviewed the manner in which Respondent’s payments were applied and continue to believe that the amount assessed to the Respondent is accurate.<sup>15</sup>

14. Ms. Behr and Mr. Rohricht have had numerous conversations about the returns and how the payments he made should be applied. Ms. Behr has repeatedly informed Mr. Rohricht of the need to pay penalties and interest on outstanding sales tax liability. Mr. Rohricht admittedly is aware that Minnesota Statutes provide for the imposition of penalties for filing and paying taxes late.<sup>16</sup>

15. As of the date of the hearing in this matter, the Respondent continued to owe the Department at least \$1,034 in sales tax.<sup>17</sup>

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<sup>10</sup> Testimony of Behr; Exs. 3, 4.

<sup>11</sup> Testimony of Behr; Ex. 1.

<sup>12</sup> Testimony of Behr; Ex. 2

<sup>13</sup> Ex. 3; Testimony of Behr. She further noted that the amount due for April 2005 and May 2005 including penalty and interest calculated to July 28, 2005, was \$3,232.96, making the total amount of \$4,437.31 due in secured funds from the Respondent to satisfy its sales tax liability.

<sup>14</sup> Testimony of Behr; attachment to Ex. 3.

<sup>15</sup> Testimony of Behr, Rohricht.

<sup>16</sup> Testimony of Behr, Rohricht.

<sup>17</sup> Ex. 5; Testimony of Behr.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Commissioner of Revenue and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 270C.722<sup>18</sup> and 14.50.
2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant procedural requirements of law and rule.
3. Minn. Stat. § 270C.722, subd. 1, authorizes the Commissioner to revoke a sales tax permit if a person fails to comply with the sales and use tax provisions of Chapter 289A.
4. The Respondent has failed to pay sales taxes as required by Minn. Stat. § 289A.20.
5. As a result of the failure to pay sales taxes owed to the Department, reasonable cause exists to revoke the Respondent's sales tax permit under Minn. Stat. § 270C.722.
6. These Conclusions are reached for the reasons discussed in the attached Memorandum, which is incorporated by reference in these Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: That the Commissioner of Revenue revoke the sales and use tax permit of Wedgewood Jewelers, Inc., Minnesota Tax ID #3602613.

Dated: November 21, 2005

S/Barbara L. Neilson  
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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Tape-recorded.  
No Transcript Prepared.

### **MEMORANDUM**

The Respondent disputes the accuracy of the additional penalty and interest calculated by the Department when it allocated the Respondent's March 2005 payment

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<sup>18</sup> Minn. Stat. § 297A.86, which was cited in the Notice of and Order for Hearing, was repealed by Minnesota Laws 2005, Ch. 151, Art. 1, Sec. 117, and was recodified as Minn. Stat. § 270C.722.

to the September 2004 and October 2004 liability. The Department contends that the resulting shortfall of \$1,034 in the Respondent's February 2005 payment, plus penalties and interest, is properly charged to the Respondent and remains owing.

The computer-generated filing confirmation received by the Respondent inexplicably failed to properly note the penalties that would apply to the Respondent's September and October 2004 sales tax liability. Those returns were not filed until March 25, 2005, and were not paid until March 28, 2005, more than five months after the September return was due and more than four months after the October return was due. The Department correctly calculated the penalties and interest applicable to the September and October 2004 returns and correctly applied the \$13,006 payment submitted by the Respondent. The Respondent and the Department's collections officer had numerous conversations about the Department's handling of the payment, and the Respondent was provided with subsequent bills and notices as well as a written explanation of the Department's calculations and the manner in which the payment was applied. The Respondent has been through revocation proceedings previously and Mr. Rohricht, the President of the Respondent, knew that state law provided for the imposition of penalties and interest on late filings and late payments. Under the circumstances, the Department is not precluded from correcting the error reflected in the filing confirmations and charging the correct amount of penalty and interest for the filings for September and October 2004.

As a result of the Department's appropriate charge of penalty and interest, the payment the Respondent believed would satisfy its tax liability as of March 25, 2005, did not, in fact, cover the entire amount due. The amount of \$1,034.00 remains owing for February 2005. Although the Department is also claiming that penalties and interest have accrued on this amount, the Commissioner may wish to consider waiving those penalties and interest because the information contained in the filing confirmations led the Respondent to believe that the \$13,006.00 payment would cover the entire amount of sales tax owed at that point.

**B.L.N.**